

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Venduras	Team: Squad #16	CCRB Case #: 202203603	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/04/2022 10:56 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 12/4/2023	Precinct: 40
Date/Time CV Reported Sun, 06/05/2022 2:32 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 06/05/2022 2:32 AM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Luke Speranza	11812	965879	052 DET
2. An officer			
3. PO Brett Malfetano	14275	966183	040 PCT
4. PO Shamil Flores	16190	971438	040 PCT
5. PO Jose Pichardo	23992	967256	040 PCT
6. PO Ernst Celestin	28671	966991	040 PCT
7. PO Jonathan Torres	20300	971706	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer deleted information on § 87(2)(b) electronic device.	
B. PO Luke Speranza	Abuse: Police Officer Luke Speranza searched § 87(2)(b) recording device.	
C. PO Jose Pichardo	Abuse: Police Officer Jose Pichardo entered § 87(2)(b) in the Bronx.	
D. PO Jose Pichardo	Abuse: Police Officer Jose Pichardo threatened to arrest § 87(2)(b)	
E. PO Jonathan Torres	Abuse: Police Officer Jonathan Torres entered § 87(2)(b) in the Bronx.	
F. PO Brett Malfetano	Abuse: Police Officer Brett Malfetano entered § 87(2)(b) in the Bronx.	
G. PO Ernst Celestin	Abuse: Police Officer Ernst Celestin entered § 87(2)(b) in the Bronx.	
H. PO Luke Speranza	Abuse: Police Officer Luke Speranza entered § 87(2)(b) in the Bronx.	
I. PO Brett Malfetano	Force: Police Officer Brett Malfetano used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.PO Ernst Celestin	Abuse: Police Officer Ernst Celestin threatened to arrest § 87(2)(b)	
K.PO Ernst Celestin	Abuse: Police Officer Ernst Celestin threatened to arrest § 87(2)(b)	
L.PO Shamil Flores	Abuse: Police Officer Shamil Flores entered § 87(2)(b) in the Bronx.	

Case Summary

On June 5, 2022, § 87(2)(b) filed this complaint via the CCRB call processing system.

On June 4, 2022, at approximately 10:56 PM, Police Officer Brett Malfetano, Police Officer Jose Pichardo, Police Officer Luke Speranza, Police Officer Ernst Celestin, Police Officer Jonathan Torres, and Police Officer Shamil Flores from the 40th Precinct went to § 87(2)(b) in the Bronx in response to a 911 call regarding an ongoing neighbor dispute. While investigating allegations that second- and third-floor residents threw items at each other, the third-floor resident, § 87(2)(b) showed PO Malfetano and PO Pichardo security footage on her phone. An officer allegedly deleted relevant footage from § 87(2)(b) phone (**Allegation A: Abuse of Authority**, § 87(2)(g)). When § 87(2)(b) asked for her phone back, PO Speranza continued to review other videos (**Allegation B: Abuse of Authority**, § 87(2)(g)).

While investigating the dispute, officers learned that there was an active I-card with probable cause to arrest § 87(2)(b) son, § 87(2)(b). PO Pichardo entered § 87(2)(b) apartment (**Allegation C: Abuse of Authority**, § 87(2)(g)). After arguing about the validity of the arrest with § 87(2)(b), PO Pichardo threatened to arrest her (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Torres then entered the apartment, followed by PO Malfetano, PO Celestin, and PO Speranza (**Allegations E to H: Abuse of Authority**, § 87(2)(g)).

As § 87(2)(b) blocked PO Malfetano's path, he guided her out of his way (**Allegation I: Force**, § 87(2)(g)). PO Celestin then threatened to arrest § 87(2)(b) (**Allegation J: Abuse of Authority**, § 87(2)(g)). PO Celestin also allegedly threatened to arrest § 87(2)(b) another second-floor resident (**Allegation K: Abuse of Authority**, § 87(2)(g)). PO Flores was the last officer to enter the apartment (**Allegation L: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested on an open I-card and charged with criminal mischief for previously damaging § 87(2)(b) property (**Board Review 1**).

This case was originally assigned to former Supervising Investigator Rachel Murgo and was reassigned to Investigator Nick Venduras on June 28, 2023, upon her departure from the agency.

The NYPD Legal Department provided six Body Worn Camera (BWC) videos in regard to this case (**Board Review 2 to Board Review 7**). The investigation is not in possession of additional video.

Findings and Recommendations

Allegation (A) Abuse of Authority: An officer deleted information on § 87(2)(b) electronic device.

Allegation (B) Abuse of Authority: Police Officer Luke Speranza searched § 87(2)(b) recording device.

It is undisputed that the officers listed above responded to § 87(2)(b) in the Bronx over an ongoing dispute between neighbors on the second and third floors. Each officer present recorded the entire incident on BWC (**Board Review 2 to Board Review 7**).

PO Malfetano's BWC shows that he is the first officer to go inside § 87(2)(b) a three-story apartment building with one unit per floor, and as the sound engages at timestamp 1:00, the sound of multiple voices shouting can be heard coming from the floors above (**Board Review 2**). As he climbs the stairs, he announces himself and encounters § 87(2)(b) and her son, § 87(2)(b) § 87(2)(b) outside their apartment at timestamp 1:10, where § 87(2)(b) says the neighbor above threw "boiling, hot water" on him. PO Malfetano proceeds to § 87(2)(b) apartment on the third floor at timestamp 1:34. In front of her apartment door, § 87(2)(b) explains that a verbal dispute between the families earlier that night escalated into threats of physical harm. § 87(2)(b) and her children report that members of § 87(2)(b) family came up the stairs and threw a bottle of water and food at their door. She also accuses § 87(2)(b) of throwing a can of corn, which hit § 87(2)(b) chest. § 87(2)(b) says she has video evidence and PO Malfetano agrees to look at it at timestamp 2:10.

At timestamp 4:21, § 87(2)(b) shows PO Malfetano her phone's screen where the security footage is displayed (**Board Review 2**). When he asks if there is a video showing § 87(2)(b) throwing this corn at timestamp 4:26, she answers that she does not know if that was captured on camera and she continues to scroll through a series of security videos. When she finds another video where she says § 87(2)(b) threatens her with a stick, PO Malfetano reaches over saying, "Let me see," at timestamp 4:47. § 87(2)(b) hands PO Malfetano her phone and he plays the video she selected once, asking what the figure on her staircase said, and then plays it again close to his right ear, which brings the cell phone off camera from timestamp 4:55 to timestamp 4:57. Other than trying to skip back in the video and replaying it, PO Malfetano does not do anything else with the phone before handing it back to § 87(2)(b) at timestamp 4:58. PO Pichardo, who is off camera on the staircase, says he wants to see the video showing § 87(2)(b) throwing these items at timestamp 5:02. § 87(2)(b) continues to show PO Malfetano more video footage on her phone until timestamp 6:01, when he walks away and tells PO Speranza what happened. PO Malfetano does not touch § 87(2)(b) phone again until timestamp 8:59.

At timestamp 6:19 of PO Pichardo's BWC, PO Pichardo approaches § 87(2)(b) and she hands him her phone to show relevant footage (**Board Review 5**). Before PO Pichardo hands her phone back at timestamp 7:11, he plays a few videos and finds one where § 87(2)(b) dumps a bowl of water down on the second floor, which she explains was in self-defense and was not boiling. PO Pichardo does not handle the phone after this.

When PO Malfetano returns and takes the phone again at timestamp 8:59, he plays one security video (**Board Review 2**). As PO Speranza walks up the stairs, PO Malfetano asks him if an individual in the video is present, and hands PO Speranza the phone at timestamp 9:18. After PO Speranza looks through the phone's security videos, § 87(2)(b) says "Let me look for the...," at timestamp 9:37, but she does not complete her sentence. She asks for her phone back again at timestamp 10:45 to find the video where § 87(2)(b) threw the can of corn. PO Speranza does not hand the phone back, explaining that he is "searching for evidence," because there is evidence that "needs to be viewed." He says § 87(2)(b) gave him her phone to look at, but she corrects him, saying that she gave her phone to PO Malfetano. At timestamp 16:56, after PO Speranza is unable to find the video in question, § 87(2)(b) says that he might have deleted it, but it was there, and she showed PO Malfetano. She says, "If you go to the side in the video, you will delete it." At timestamp 17:37, PO Speranza gives the phone back to PO Malfetano, who passes it back to § 87(2)(b) and asks her to find the correct video.

There is no clear BWC of footage showing § 87(2)(b) throwing the can of corn at § 87(2)(b) or her home, which is the video that was allegedly deleted. None of the officers appear

to delete data from § 87(2)(b) phone.

Both PO Malfetano and PO Pichardo said as they looked at § 87(2)(b) phone with her permission, they did not do anything that could have deleted any footage (**Board Review 8 & Board Review 9**).

PO Speranza said he also believed he had permission to look at § 87(2)(b) phone; however, he acknowledged that he did not give it back to her when she asked for it (**Board Review 10**). He explained in his interview that there was additional evidence on the phone he wanted to see to get a complete understanding of the incident. He also said he did not do anything that would have deleted anything on her phone.

The investigation was able to make a determination without interviewing § 87(2)(b)

BWC footage corroborates the officers' accounts in that they did not delete footage on § 87(2)(b) phone. Additionally, § 87(2)(b) initially told the officers that the security cameras may not have captured § 87(2)(b) throwing the can of corn. § 87(2)(g)

Per *People v Weissman*, 46 Misc. 3d 171, 997 N.Y.S.2d 602 (2014), the United States Supreme Court has repeatedly held that a search conducted without a warrant is unreasonable and subject only to a "few specifically established and well-delineated exceptions," such as voluntary consent to search, exigent circumstances that pose an immediate threat to life or evidence, and search-incident-to lawful arrest (**Board Review 11**).

PO Speranza never obtained consent to search § 87(2)(b) phone for additional surveillance footage and when § 87(2)(b) asked for her phone back, this showed that she withdrew her initial consent for officers to look at the video on the phone. § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jose Pichardo entered § 87(2)(b) in the Bronx.

Allegation (E) Abuse of Authority: Police Officer Jonathan Torres entered § 87(2)(b) in the Bronx.

Allegation (F) Abuse of Authority: Police Officer Brett Malfetano entered § 87(2)(b) in the Bronx.

Allegation (G) Abuse of Authority: Police Officer Ernst Celestin entered § 87(2)(b) in the Bronx.

Allegation (H) Abuse of Authority: Police Officer Luke Speranza entered § 87(2)(b) in the Bronx.

Allegation (L) Abuse of Authority: Police Officer Shamil Flores entered § 87(2)(b) in the Bronx.

It is undisputed that at the time of the incident, § 87(2)(b) was wanted on an I-card and officers arrested him inside his apartment. At timestamp 2:55 of PO Malfetano's BWC, § 87(2)(b)

§ 87(2)(b) tells PO Malfetano that the police were looking for § 87(2)(b) because he broke her security camera (**Board Review 2**). PO Pichardo testified that he searched the location's address and learned of an open I-card for § 87(2)(b) which showed there was probable cause to arrest him (**Board Review 9**). The probable cause to arrest I-card for criminal mischief (misdemeanor) was issued on April 13, 2022 (**Board Review 12**).

In her statement, § 87(2)(b) said she asked the officers to exit her apartment once they were inside because she had not given them permission to enter, but the officers ignored this request (**Board Review 13**). § 87(2)(b) CCRB statement is consistent with his mother's, in that members of his household asked officers to leave (**Board Review 14**).

§ 87(2)(b) was unavailable to provide a statement to the CCRB.

For most of the incident, PO Flores' BWC shows he remained at the entrance of § 87(2)(b) apartment, where various members of the household tell him about the ongoing neighbor dispute (**Board Review 4**). Beginning at timestamp 19:14, § 87(2)(b) from inside the apartment, tells officers his mother already sustained a broken arm due to the situation and officers will eventually have to "pick up somebody for a murder."

PO Malfetano's BWC shows the group of officers discussing how to move forward beginning at timestamp 22:17 (**Board Review 2**). During this conversation, the officers determine to classify the argument between the families as harassment, but they will arrest § 87(2)(b) for the open I-card. PO Malfetano briefly speaks to § 87(2)(b) again from the stairs leading to the third floor from timestamp 23:45 to 24:08. He goes to the bottom of the stairs at timestamp 24:29 as PO Pichardo stops at the threshold of the second-floor apartment. PO Malfetano then climbs up the stairs again and his arm, which is resting on the banister, partially blocks the other officers, but he goes back down at timestamp 25:17, at which point PO Pichardo appears to have fully crossed the threshold. At timestamp 25:29, PO Malfetano addresses PO Speranza, who is at the threshold of the apartment and asks if the occupants let the officers in. PO Speranza replies they do not have to because officers observed someone wanted for a crime on an I-card. PO Speranza adds if § 87(2)(b) locks himself in the bathroom, they will have ESU deal with a "barricaded perp – it's that simple." Just after this conversation, PO Malfetano positions himself among the other officers at the threshold and § 87(2)(b) can be heard saying officers cannot go into her home, and PO Speranza says, "Yes we can."

Meanwhile, in PO Pichardo's BWC, once the officers have determined to arrest § 87(2)(b) § 87(2)(b) PO Pichardo walks to § 87(2)(b) apartment at timestamp 24:19 and enters ahead of the other officers (**Board Review 5**). § 87(2)(b) who is near the entrance, repeatedly tells officers both in English and in Spanish that they are not permitted to go inside. When § 87(2)(b) comes from the rear of the apartment to stand near the entrance, he asks if he is being arrested at timestamp 27:46. When PO Pichardo answers in the affirmative, § 87(2)(b) says he spoke to the detective and arranged to turn himself in on a later date. PO Malfetano, PO Celestin, and PO Pichardo all say they must take him into custody. At timestamp 28:06, PO Celestin says, "We're here now, we see him," and gestures with his hand § 87(2)(b) will be coming with them. § 87(2)(b) responds that officers cannot take him out of his house.

PO Flores' BWC shows the remaining officers enter the apartment in the following order until timestamp 28:24: PO Torres, PO Malfetano, PO Celestin, PO Speranza and lastly PO Flores (**Board Review 4**).

All BWC videos are consistent with one another and at no point does any video show any second-floor occupant giving consent to enter the apartment to officers (**Board Review 2 to Board Review 7**).

None of the officers interviewed said they asked for permission to enter the unit, they did not hear any other officer ask for permission, nor did they ever receive such permission from any occupant of that apartment (**Board Review 8 to Board Review 10 & Board Review 15 to Board Review 17**).

PO Pichardo explained that while an I-card does not allow officers to enter an apartment to arrest an individual, it was appropriate in this situation because they had seen § 87(2)(b) through the door which remained open the whole time and officers were there responding to a job (**Board Review 9**).

In his CCRB testimony, PO Torres stated the I-card with probable cause to arrest alone provided the officers the right to enter the unit (**Board Review 16**). He provided no other reasons for entering the location.

PO Malfetano said he understood that I-cards do not allow officers to enter a home, where arrest warrants, which are signed by judges, allowed officers to enter an apartment for an arrest (**Board Review 8**). He believed officers had been given permission to enter the unit because after he went upstairs, he saw his fellow officers at the threshold and then enter the apartment. He initially said he went inside the apartment because other officers had already gone in, but he did not know how they gained entry to the apartment. After reviewing his BWC, he said he asked PO Speranza if they had permission to enter, but because other officers were already inside, he did not stop their actions as he assumed they had permission.

PO Celestin, like PO Pichardo, understood I-cards alone do not allow officers to enter an apartment to make an arrest; however, he considered seeing § 87(2)(b) through the open door and the “chaotic nature” of the incident to be exigent circumstances that would give them permission to do so (**Board Review 15**). PO Celestin considered the scene chaotic because the residents from the different apartments were all yelling at each other at once.

In his CCRB statement, PO Speranza stated that not only was there an I-card, but a wanted flier out for § 87(2)(b) arrest as well; however he did not recall seeing either one (**Board Review 10**). A wanted flier, which can be distributed to the public, other law enforcement agencies, and the news media, would have the suspect’s picture with a brief description of the crime, the case number, and the number for the command investigating the crime. He believed officers were allowed to enter the apartment based on the I-card, wanted flier, and having seen § 87(2)(b)

While PO Flores said an I-card would not allow an officer into an apartment on its own, he considered § 87(2)(b) talk of someone being murdered, § 87(2)(b) concerns for her safety, and the open door to the second floor unit to be sufficient exigent circumstances to allow them to enter to make the arrest (**Board Review 17**). He said if officers left and the situation escalated to violence, the officers would not have done their job. Additionally, an officer cannot just “let go of an I-card,” so they were compelled to arrest § 87(2)(b)

None of the officers testified they suspected § 87(2)(b) of being armed (**Board Review 8 to Board Review 10 & Board Review 15 to Board Review 17**).

New York Penal Law Section 145.00 defines criminal mischief, a class A misdemeanor, as, but not limited to, recklessly damaging property of another person in an amount exceeding two hundred fifty dollars (**Board Review 18**).

According to *Payton v. New York*, 445 U.S. 573, warrantless entries are prohibited under the Fourth Amendment (**Board Review 19**). One of the exceptions allowing for a warrantless entry to an apartment is the presence of exigent circumstances as outlined by *People v McBride*, 14 N.Y.3d 440, which states the following factors must be considered: “(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry” (**Board Review 20**).

These officers did not have a warrant to enter this apartment, only an I-card; § 87(2)(g) [REDACTED] Despite PO Celestin and PO Flores claiming that exigent circumstances existed, as BWC shows, these circumstances were not present. § 87(2)(b) [REDACTED] charge was a misdemeanor offense for criminal mischief, there was no mention that the officers believed he was armed, and he told the officers that he was already in communications with the detective assigned to the case. § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (D) Abuse of Authority: Police Officer Jose Pichardo threatened to arrest § 87(2)(b) [REDACTED]

Allegation (I) Force: Police Officer Brett Malfetano used physical force against § 87(2)(b) [REDACTED]

Allegation (J) Abuse of Authority: Police Officer Ernst Celestin threatened to arrest § 87(2)(b) [REDACTED]

Allegation (K) Abuse of Authority: Police Officer Ernst Celestin threatened to arrest § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] said PO Malfetano pushed her with both hands as officers entered her apartment (**Board Review 13**). At the time, § 87(2)(b) [REDACTED] was standing in the hallway of her apartment, and the door was open. § 87(2)(b) [REDACTED] almost fell, and § 87(2)(b) [REDACTED] grabbed § 87(2)(b) [REDACTED] and pushed her into the first bedroom. PO Celestin then yelled at § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] about getting into § 87(2)(b) [REDACTED] room, though § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were already in the room at the time. PO Celestin said he would arrest her but did not specify why. PO Celestin told § 87(2)(b) [REDACTED] something to the effect of, “Keep your mother in the room...if she don’t want to be arrested,” or “Make sure you stand in the room, or I will cuff you.” None of the officers threatened to arrest anyone else.

In his CCRB statement, § 87(2)(b) [REDACTED] stated that after officers entered the apartment, he did not see anyone place their hands on § 87(2)(b) [REDACTED] but an officer, identified as PO Malfetano by the investigation, “bumped into” her as he tried to move past her, and his arm made contact with her

(Board Review 14). At that point, § 87(2)(b) moved his mother, so they were both inside his room. PO Celestin told § 87(2)(b) that she was in the way and needed to step back and may have said she was obstructing the officers from doing their job. PO Celestin asked if she wanted to be arrested as well and told her to step back. § 87(2)(b) told PO Celestin that § 87(2)(b) was inside the room. In response, PO Celestin asked § 87(2)(b) “Do you want to be arrested as well for talking back and obstructing us from doing our job?” § 87(2)(b) told PO Celestin that he could not arrest him for not doing anything and that he was standing in his room, keeping his mother there, while the officers were “yelling and being aggressive.” § 87(2)(b) pointed out that he was doing what the officer had asked.

BWC by PO Pichardo shows that once inside, he asks where § 87(2)(b) is because he wants to speak with him. At timestamp 24:46, § 87(2)(b) asks why and then positions herself in front of PO Pichardo, telling him the officers will not “take him” and no one will be going to jail from her apartment (Board Review 5). After some back and forth in Spanish and English, PO Pichardo tells § 87(2)(b) to, “Get your mom bro, get your mom, because I don’t want to take her for disorderly,” at timestamp 25:05. § 87(2)(b) joins his mother from timestamp 26:07 to timestamp 26:37. After more back and forth, where § 87(2)(b) tells the officers to leave, PO Pichardo asks her to step aside. At this point, § 87(2)(b) is standing in the hallway inside her apartment, preventing the officers from moving further towards the rooms in the back. After § 87(2)(b) remains where she is, PO Celestin asks § 87(2)(b) twice if she is going to step aside at timestamp 27:00, to which § 87(2)(b) replies, “And, what happen?” PO Pichardo then says, “Ma’am, I’m giving you the last chance.” In Spanish, § 87(2)(b) tells his mother to move before she gets arrested. § 87(2)(b) then walks down the hallway toward § 87(2)(b) bedroom.

Once § 87(2)(b) who is shirtless, comes out from the back area of the apartment and learns he is going to be arrested, he asks if he can put a shirt on at timestamp 28:16 (Board Review 5). At the same time, PO Malfetano enters the apartment and follows § 87(2)(b) to the back room. § 87(2)(b) is in the hallway leading toward this back room and at timestamp 28:20, PO Malfetano moves past her, and his left arm makes a fast upward and outward motion as he passes. § 87(2)(b) asks why he pushed her. PO Pichardo and PO Malfetano then follow § 87(2)(b) to his bedroom where he gets a shirt, and the officers handcuff him.

At timestamp 28:20 of PO Malfetano’s BWC, § 87(2)(b) is standing at the threshold of the room on the left while § 87(2)(b) is standing next to her in the middle of the hallway. As § 87(2)(b) turns around to walk towards the back rooms, § 87(2)(b) steps in front of PO Malfetano and asks, “Why you doing that?” PO Malfetano then places his right hand on § 87(2)(b) upper left arm when she stands in his way at timestamp 28:22 (Board Review 2). He then guides her into the room towards the left side of the screen. PO Malfetano then follows § 87(2)(b) to his bedroom.

PO Celestin’s BWC shows once PO Malfetano and PO Pichardo pass § 87(2)(b) PO Celestin approaches § 87(2)(b) and § 87(2)(b) who are in the doorway area of another bedroom at timestamp 25:05 (Board Review 6). PO Celestin asks § 87(2)(b) if she also wants to get arrested and she responds by asking why PO Malfetano pushed her. PO Celestin raises his voice to tell § 87(2)(b) to take her inside, which he does. After PO Celestin continues to yell that § 87(2)(b) should take her into the room, both § 87(2)(b) and § 87(2)(b) correctly point out that she is, in fact, inside the room. PO Celestin replies to stay inside and a few seconds later tells § 87(2)(b) “You’re lucky we haven’t taken you yet.” When § 87(2)(b) says, “Take me!” PO Celestin says they can because she is obstructing them from doing their job. PO Celestin appears to only make this threat of arrest against her.

PO Pichardo said once he asked § 87(2)(b) where § 87(2)(b) was and if he could speak to him, § 87(2)(b) seemed to understand what was happening and became irate and emotional (**Board Review 9**). She got in PO Pichardo's face and shouted that officers were not going into her apartment and asked them to leave. PO Pichardo told her if she continued to act this way, she would get arrested for disorderly conduct or obstruction of justice. He said it is easier for civilians to understand "disorderly" than to explain obstruction of governmental administration or OGA. There was nothing else PO Pichardo could recall that § 87(2)(b) did for which she could be arrested. PO Pichardo could not recall if any officers made physical contact with, or pushed, § 87(2)(b).

PO Malfetano said when § 87(2)(b) got between him and § 87(2)(b) he used his left arm in an extended position to move around and past her (**Board Review 8**). While he made contact with her, he did not shove or push § 87(2)(b) and as he passed her, § 87(2)(b) seemed to try to grab PO Malfetano's arm. He explained he only pulled his arm up and away when she did this. While he did not hear any officers threaten to arrest § 87(2)(b) had she continued to stand in his way, she could have been arrested for OGA.

PO Celestin said he did not see PO Malfetano push § 87(2)(b) but did see her attempt to get between officers and her son (**Board Review 15**). PO Celestin told § 87(2)(b) to move aside and get into one of the other rooms, warning her that she could be arrested for OGA if she did not stop. § 87(2)(b) complied with these directions and did not do anything else for which she could have been arrested. PO Celestin did not warn or threaten anyone else with arrest.

According to *New York Penal Law 195.05*, an individual who obstructs or impairs the administration of law enforcement or other governmental function is guilty of obstructing governmental administration (OGA) (**Board Review 21**). OGA is a Class A misdemeanor, which is an arrestable offense.

It is undisputed that § 87(2)(b) was being placed under arrest and BWC shows § 87(2)(b) standing in officers' way as they move towards § 87(2)(b) bedroom and officers telling her multiple times to move. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Celestin's BWC shows he only threatened § 87(2)(b) with arrest and did not threaten to arrest § 87(2)(b) § 87(2)(g)

Patrol Guide Procedure 221-01 instructs officers to only use a reasonable amount of force when it is necessary to gain control or custody of a subject and only after attempted de-escalation techniques fail (**Board Review 22**).

When PO Malfetano moved § 87(2)(b) out of the way, officers had already told her to step aside multiple times. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 23**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 24**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 25**).

- Police Officer Luke Speranza has been a member of service for five years and has been the subject in three other CCRB complaints and seven other allegations, one of which was substantiated.
 - 202003128 involved a substantiated allegation of a discourteous word against PO Speranza. The Board recommended Command Discipline A and the NYPD imposed no discipline. § 87(2)(g)
- § 87(2)(g), § 87(4-b)
- § 87(2)(g)
- Police Officer Jonathan Torres has been a member of service for two years and has been the subject in one other CCRB complaint and nine other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Brett Malfetano has been a member of service for five years and has been the subject in 11 other CCRB complaints and 30 other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Ernst Celestin has been a member of service for four years and has been the subject in 13 other CCRB complaints and 10 other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Shamil Flores has been a member of service for two years and has been the subject in one other CCRB complaint and three other allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of March 13, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 26**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 16

Investigator:	<u>Nick Venduras</u>	<u>Inv. Nicholas Venduras</u>	<u>Sept. 18, 2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Patrick Yu</u> Signature	<u>IM Patrick Yu</u> Print Title & Name	<u>09/18/2023</u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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